NO. 80-1363

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

MARJORIE WILLIAMSON,

Petitioner,

VS.

JOHN KIMBROUGH, etc.,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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TO THE HONORABLE JUSTICES OF SAID COURT:

STATEMENT OF THE CASE

This is a civil rights case in which a landowner, pro se, claimed that the city zoning administrator deprived her of constitutionally protected rights because he allegedly told her she could not appeal a decision of the zoning commission.

The complaint contained allegations that the landowner sought to have her property rezoned, that the request was denied by the city's zoning commission, that the landowner presented the zoning adminstrator with a request for a hearing before the city council,[1] and that the zoning administrator told the landowner there could be no appeal at that time because interested parties had

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1 Texas law requires that zoning changes be made by a city council only after the council has considered the recommendation of the city's zoning commission. Art. 1011f, Tex.Rev.Civ. Stat.Ann.

not been notified.[2] There was no allegation that the landowner petitioned the city council to overrule the decision of the planning and zoning commission.

The district court dismissed the complaint for failure to state a claim upon which relief could be granted, and the court of appeals affirmed. The landowner petitions this Court for writ of certiorari.

SUMMARY OF ARGUMENT

An allegation that the zoning administrator supplied a landowner with bad advice, if true, does not rise to the level of a constitutional tort.

ARGUMENT

A landowner sued alleging only that the zoning administrator told her she

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2 Texas law requires written notice of a proposed zoning change to owners of real property lying within 200 feet of the property on which the change is sought. Art. 1011f, Tex.Rev.Civ.Stat. Ann.

could not appeal an adverse recommendation of the city's planning and zoning commission. That allegation, if true, amounts to no more than a claim that the zoning administrator gave her bad advice concerning the proper procedures to be followed in appealing from a decision of the commission. That allegation, taken as true for the purposes of Rule 12(b)(6), does not rise to the level of a constitutional deprivation, and the landowner failed to state a claim upon which relief can be granted. See, e.g., Wishart v. McDonald, 500 F.2d 1110, 1115 (1st Cir. 1974), Palmigiano v. Mullen, 491 F.2d 978, 980 (1st Cir. 1974). The district court correctly dismissed the landowner's complaint, and the court of appeals correctly affirmed.

The landowner's references to this Court's decisions in Monell v. Department of Social Services, 436 U.S 658 (1978) and Owen v. City of Independence, 445 U.S. 622 (1980), are inapposite because the complaint contained no allegations against the municipality.

CONCLUSION AND PRAYER

The landowner's pro se suit appears to have been based upon her sincere misunderstanding of both the facts and the law, and the allegations of her complaint did not rise to the level of a constitutional deprivation. The district court correctly dismissed her complaint for failure to state a claim upon which relief could be granted, and the court of appeals correctly affirmed that dismissal. The petition for writ of certiorari, therefore, should be denied.

Respectfully submitted,

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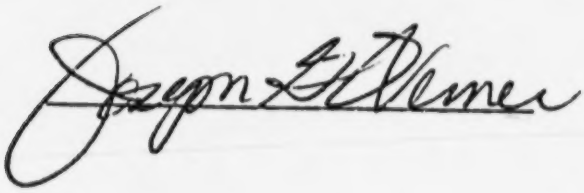
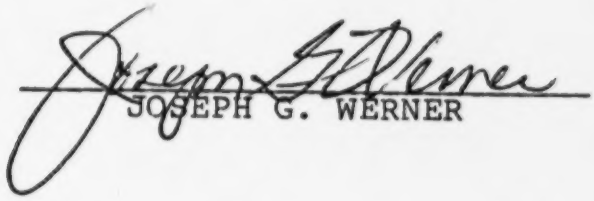


CERTIFICATE OF SERVICE

A copy of the foregoing brief was served by mail on Marjorie Williamson, petitioner pro se, on the 18th day of March, 1981.



JOSEPH G. WERNER

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